

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

KAREEM BELLAMY, et al.,	*	Case No. 12-CV-1025 (AMD)
	*	
	*	
Plaintiffs,	*	Brooklyn, New York
	*	January 22, 2021
v.	*	
	*	
CITY OF NEW YORK, et al.,	*	
	*	
Defendants.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING  
BEFORE THE HONORABLE PEGGY KUO  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:	ILANN M. MAAZEL, ESQ. EARL WARD, ESQ. MARISSA BENAVIDES, ESQ. Emery Celli Brinckerhoff Abady Ward & Maazel LLP 600 Fifth Avenue New York, NY 10020
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For the Defendants:	JOSHUA J. LAX, ESQ. New York City Law Department 100 Church Street Rm 3-154 New York, NY 10007

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1 (Proceedings commenced at 1:30 p.m. )

2 THE COURT: This is a motion hearing in the matter  
3 of Kareem Bellamy vs. City of New York, et al., docket no. 12-  
4 CV-1025, Magistrate Judge Peggy Kuo presiding.

5 Will the parties please state their appearances,  
6 starting with the plaintiff.

7 MR. MAAZEL: Good afternoon, Your Honor. Ilann  
8 Maazel for the plaintiff, Kareem Bellamy.

9 MR. WARD: Good afternoon, Your Honor. Earl Ward  
10 for the plaintiffs.

11 MS. BENAVIDES: Good afternoon, Your Honor. Marissa  
12 Benavides, also for plaintiffs.

13 MR. RUDIN: Good afternoon. Joel Rudin for  
14 plaintiff.

15 MR. LAX: For defendant City of New York, Michael  
16 Solomeno, and John Gillen, I am Joshua Lax. Good afternoon.

17 THE COURT: All right. Good afternoon, everyone.

18 So there had been a motion -- originally for a pre-  
19 motion conference on the motion to amend but I think the  
20 parties wanted to -- my understanding is the parties want to  
21 just to go the heart of the matter, the motion to amend, and  
22 so I wanted to give the parties an opportunity today to talk  
23 about that.

24 If you could give me a moment, I had a little bit of  
25 trouble opening all the documents, but please just bear with

1 me while I pull everything up so that I'm looking at the  
2 appropriate documents before you get started.

3 (Pause.)

4 So why don't I start with the plaintiff and then you  
5 can tell me what you're attempting to accomplish here and then  
6 I'll hear from Mr. Lax. Okay?

7 MR. MAAZEL: Thank you, Your Honor. This is Ilann  
8 Maazel for the plaintiff.

9 So we are here on a motion to amend filed by the  
10 plaintiff. This is a motion to add a new *Monell* claim against  
11 the City of New York. And the motion arises from discovery  
12 that we engaged in in November and December of 2020.

13 So just to step back for a moment, we obviously have  
14 a number -- Section 1983 claims against the individual  
15 defendants and -- as well as *Monell* claims against the  
16 defendant City.

17 What we learned that was new in the depositions in  
18 November and December was important information that we felt  
19 merited an additional claim.

20 So we already had a claim related to the summation  
21 misconduct. We had a claim related to the witness protection  
22 program.

23 But what we learned from Mr. Schwartz, the number  
24 two in the Queens District Attorney's Office, and what we  
25 learned from Mr. Castellano, the 30(b)(6) witness from the

1 City, is that there were at least some 58 decisions from the  
2 Second Department and other courts before 1996 finding  
3 arranged prosecutorial misconduct in the office.

4 And we learned that the QDAO was aware of those  
5 decisions at the highest levels and we learned that they took  
6 no action to fix any of those problems. They changed no  
7 policy. They changed no procedure. They didn't discipline  
8 anyone. They didn't investigate. They didn't change their  
9 evaluations. They didn't change the way they supervised.  
10 They didn't change their hiring practices.

11 They had really a broad based deliberate  
12 indifference to prosecutorial misconduct in the office,  
13 including the very types of conduct that we are at issue in  
14 the Bellamy case, such as *Brady* violations and summation  
15 misconduct. So this was significant information to us.

16 Just as a matter of timing we in August of 2020  
17 filed our 3(b)(6) notice with the City, or served our 30(b)(6)  
18 notice on the City, to discuss the City's response to that  
19 memo collecting information about prosecutorial misconduct in  
20 the office.

21 The City moved to quash part or all of the 30(b)(6)  
22 notice. We had a lot of back and forth with the City, both  
23 before we went to the court and then before the court. Your  
24 Honor allowed that 30(b)(6) notice to proceed and that  
25 deposition to proceed and we did. We then deposed Mr.

1 Castellano on behalf of the City.

2 On December 1st, 2020 -- we received the transcript  
3 from that deposition on December 9th and within a few days we  
4 had drafted our amended -- or our proposed amended complaint,  
5 sent that to the City. Asked them whether they would consent  
6 to filing, they did not consent and that's what led to the  
7 premotion conference and now this motion.

8 I just want to make a couple of points on the law  
9 here. The first, of course, is as we all know leave to amend  
10 a complaint is liberally granted. That's the first point.

11 The second point is that there's really no prejudice  
12 at all to the City here. We're not adding any new defendant.  
13 We're not seeking any new discovery. We need no new discovery  
14 based on this claim.

15 This will not affect the expert discovery schedule,  
16 which is proceeding at pace. It will not affect the trial  
17 schedule. In fact, we reached an agreement with defense  
18 counsel to file the pretrial order sooner than we previously  
19 anticipated.

20 So there won't be any delay. There won't be any new  
21 defendant. And the City's papers state that they don't view  
22 this as a new claim.

23 And if that is true -- I don't agree with that, but  
24 if that is true, there's certainly no prejudice to the City  
25 for adding new information that simply supports the claims

1       that we have.

2               So we would suggest that the motion to amend be  
3       granted. We cite a number of cases to the court. It's not  
4       unusual at all to amend pleadings at the end of discovery  
5       absent some significant prejudice to the defendant and we  
6       cited the *Keinig* (ph) case and the *Purdy* (ph) case and the  
7       *J.P. Morgan* case and a number of other cases.

8               Again, we believe that this is a motion supported by  
9       evidence we learned relatively recently. We worked as  
10      diligently and promptly as we could to propose an amended  
11      complaint based upon that testimony.

12              We provided that to the defense as soon as we  
13      possibly could, really within days of receiving the transcript  
14      of that second critical deposition, and there's no prejudice  
15      at all really to the City.

16              And so we would just ask that the motion be granted,  
17      that the claim be part of the case and we proceed pursuant to  
18      the existing schedule in the case, including the pretrial  
19      order and ultimately trial.

20              THE COURT: Can you explain what the necessity is  
21      for you to have this information in an amended complaint?

22              MR. MAAZEL: Sure. So the existing claims -- the  
23      existing *Monell* claims, one of them focuses on summation  
24      misconduct exclusively. The other focuses on the witness  
25      protection program exclusively. And those claims, of course,

1       were upheld by the Second Circuit.

2               This claim is broader and it's based on the  
3       testimony we learned, which is that it wasn't simply that the  
4       City or really the QDAO was deliberately indifferent to  
5       submission of conduct. It wasn't simply that they had no  
6       policy procedure to share witness protection information with  
7       the (indiscernible) ADA or with the defense.

8               It was a broader deliberate indifference to  
9       prosecutorial misconduct in the office, the scope of which  
10      really exceeds what's in our other claims and the scope of  
11      which was unknown to the plaintiff. I mean, this was certainly  
12      known to the defense throughout the case but it was unknown to  
13      the plaintiff.

14              And so it's a claim that focuses not just on the  
15      more narrow issues of summation misconduct and the WPP  
16      program, but also on the overall deliberate indifference to  
17      prosecutorial misconduct in the office, which is important  
18      because that overall indifference to really all sorts of  
19      different types of misconduct was, we believe, a substantial  
20      factor or proximate cause of the decisions made by Mr. Guy in  
21      this case which led to Mr. Bellamy's conviction and  
22      imprisonment.

23              THE COURT: Okay. So I heard a couple of different  
24      things and I just want to get clarification. You said the new  
25      claim is -- you're saying the existing claim is deliberate

1 indifference to summation and deliberate indifference to  
2 witness protection procedures, right?

3 MR. MAAZEL: Broadly speaking, yes.

4 THE COURT: Okay. A new thing that you're adding is  
5 also deliberate indifference but to broader categories of  
6 misconduct, not just summation and witness protection but  
7 other things. You said all sorts prosecutorial misconduct.  
8 Is that right?

9 MR. MAAZEL: That's correct, Your Honor.

10 THE COURT: Okay. So it's still deliberate  
11 indifference, but it's the area to which they're deliberately  
12 indifferent go beyond summation of witness protection.

13 MR. MAAZEL: That's true. Exactly.

14 THE COURT: Okay. But how would you describe those  
15 additional areas that they're deliberately indifferent to?

16 MR. MAAZEL: Well, we cite a number of examples in  
17 the complaint and it's -- I mean, it's every type of  
18 prosecutorial misconduct -- well, not everything, but --

19 THE COURT: I know, but I'm just trying to figure  
20 out beyond summation and witness protection, what is it that  
21 they're -- what's the misconduct that they're deliberately  
22 indifferent to. Not how, right, because you described how by  
23 not disciplining and things like that --

24 MR. MAAZEL: Sure.

25 THE COURT: -- but what misconduct are you talking



1 about?

2 MR. MAAZEL: So the conduct included misconduct in  
3 openings. Misconduct in cross examination. *Rosario*  
4 violations. I believe *Molineux* violations.

5 THE COURT: I'm sorry. What?

6 MR. MAAZEL: *Molineux*. Maybe I'm mispronouncing it.  
7 M-O-L-I-N-E-U-X.

8 THE COURT: I don't know what that is.

9 MR. MAAZEL: Those are violations to using prior  
10 acts of -- when a prosecutor can and cannot use prior bad acts  
11 --

12 THE COURT: (indiscernible) the evidence.

13 MR. MAAZEL: Yes. Roughly.

14 So it's sort of wide ranging misconduct. And our  
15 point is --

16 THE COURT: Those are the categories you're talking  
17 about?

18 MR. MAAZEL: Those are some of them. I mean, I --

19 THE COURT: I'd like to know the universe of it.

20 MR. MAAZEL: All right. I'm just going through our  
21 proposed --

22 (Pause.)

23 So some of the examples we cited include -- you  
24 know, do include summation misconduct. Do include *Brady*  
25 violations. Also include disregarding court rulings. Limiting

1 unfairly prejudicial evidence. Improper cross examination  
2 questions. I'm just going through some of the examples, Your  
3 Honor, and I don't think this was an exhaustive list because  
4 we didn't want to write every single example of them.

5 THE COURT: Well, you certainly came close to it  
6 because it's quite extensive so I -- it surprises me that  
7 you're saying you weren't being exhaustive.

8 MR. MAAZEL: We didn't, for example, list every one  
9 of the 58 plus cases. I think we listed --

10 THE COURT: At the trial you're going to bring all  
11 of this up? Because if you're alleging it, I assume you're  
12 trying to prove it, right? Usually you put things in a  
13 complaint because you're intending to prove it.

14 MR. MAAZEL: Sure.

15 THE COURT: So you're going to prove all of these  
16 things. That's your intention.

17 MR. MAAZEL: Well, there's no dispute about these  
18 violations. These are all holdings by --

19 THE COURT: Okay. So then why do they need to be in  
20 the complaint? I'm just very confused about what you're  
21 trying to do here which is why I opened by asking you what  
22 you're trying to achieve.

23 MR. MAAZEL: What we would like to show the jury,  
24 demonstrate to the jury, is that there was a wide range of  
25 known prosecutorial misconduct within the office, known at the

1 highest levels of the office, A. And B, deliberate  
2 indifference to that misconduct. And --

3 THE COURT: Okay.

4 MR. MAAZEL: And various (indiscernible).

5 THE COURT: Yes. And so the deliberate indifference  
6 you've already pled and you've been doing extensive discovery  
7 on that and it's with regard to the things that actually  
8 happened -- that you've alleged happened in this case with  
9 regard to Mr. Bellamy, which led to a wrongful conviction and  
10 violation of his civil rights, or his constitutional rights  
11 with the summation of the witness protection and -- you  
12 mentioned *Brady*.

13 I don't know if it fits into those but I'll just --  
14 why don't I just say *Brady* as a separate category. Okay. So  
15 three things are already in the complaint and you've been  
16 doing a lot of discovery in that area, which is why I  
17 permitted in your recitation of what's being asked for I  
18 permitted that discovery.

19 So the question for me now is -- there are a couple  
20 of different questions. One is the list of things that you  
21 said are additional, prosecutorial misconduct, opening  
22 statements, cross examination, prior acts, disregard of court  
23 rulings, don't appear to be things that you alleged happened  
24 in Mr. Bellamy's case, correct?

25 MR. MAAZEL: That's true. Some of those things did

1 not happen in this case. That's correct.

2 THE COURT: Well, none of those, because you didn't  
3 plead it originally. And I assumed that you've scoured the  
4 record in his trial and if any of these happened, you would  
5 have brought it up.

6 So if you didn't bring it up, I'm assuming that  
7 those things did not happen at his trial, correct?

8 MR. MAAZEL: Our claims about what happened in the  
9 Bellamy case specifically are not different by  
10 (indiscernible).

11 THE COURT: Right. And so if you're going to say  
12 that the Queens D.A.'s Office was a total miss and they're  
13 disregarding all kinds of prosecutorial misconduct, examples  
14 of which affected your client's case, you already are in a  
15 position to do that because you can argue what happened in  
16 your client's case and you can argue the *Monell* part, which is  
17 the background, which is that the office didn't do anything  
18 that could have helped your client avoid these problems.

19 And so to bring in all this other information into  
20 the complaint I am just very confused as to how the trial is  
21 going to happen when the jury has to read this extensive  
22 complaint, because that's what they'll have to do as part of  
23 their deliberations, and go through it say basically what the  
24 heck. What are we deciding here? I thought this trial was  
25 about Mr. Kareem Bellamy.

1           And I just don't know what is accomplished either  
2           for your client or for your case by adding all this  
3           distracting, perhaps -- well, I will say unnecessary detail to  
4           the complaint. And that's why I asked you because I thought I  
5           might be missing something.

6           Why does this need to be in a complaint? Why can't  
7           it just be part of the case that you may be able to present,  
8           if Judge Donnelly allows it, to support your existing *Monell*  
9           claims, which are already quite broad and specifically talk  
10          about Kareem Bellamy's trial. And some of it could be -- you  
11          know, there's stipulations that certain things happened. And  
12          that's it. And you could present your case that way. Am I  
13          missing something?

14          MR. MAAZEL: Well, adding this claim will ensure  
15          that the jury hears the full sweep and scope of the deliberate  
16          indifference of this office. And --

17          THE COURT: But I assume they're going to hear that  
18          anyway because you've got all this information. And if you  
19          could convince Judge Donnelly that you should be able to  
20          present this information to support the claim about the *Monell*  
21          claim about the deliberate indifference for the prosecutorial  
22          misconduct that occurred in your client's case, then you get  
23          to present what you need to to prove your case.

24          MR. MAAZEL: My point, Your Honor, is simply that  
25          there's different types of misconduct engaged on a systemic

1 basis by the office that led to the breakdowns that occurred  
2 in Mr. Bellamy's case.

3 And they're not all the same. There are different  
4 ways -- there are different practices of the office, there's  
5 different policies to the office that led to this wrongful  
6 conviction. And we're already pled two of them. But they  
7 aren't the only practices, policies and customs that led to  
8 what happened here.

9 And certainly we're entitled, I believe, to plead  
10 more than one *Monell* claim in a given case. And here there is  
11 a broader policy/practice in the office that was a proximate  
12 cause of the constitutional violations in this case and --

13 THE COURT: Well, if that's the case, why wouldn't  
14 it be enough for you just to amend it to say summation,  
15 witness protection, Brady and other types such as opening  
16 statements, cross examination, (indiscernible), disregard of  
17 court ruling?

18 MR. MAAZEL: In short, just add all of those  
19 allegations to the existing claims as opposed to a new claim?

20 THE COURT: So the complaint -- it's a document of  
21 allegations. I'm just asking -- I haven't heard from Mr. Lax  
22 yet, right, so I'll hear from him, but I'm just -- there's a  
23 lot of detail here.

24 And that's the question -- that's really the heart  
25 of my question is why are you throwing all of this detail into

1       this document that's basically a pleading document?

2               MR. MAAZEL: Sure, and it's -- you know, it is a  
3 long complaint. It's certainly not the longest complaint I've  
4 seen. But that reflects the sweeping nature of the  
5 allegations.

6               THE COURT: Yeah, but this case -- this is what -- I  
7 know Judge Donnelly has expressed her concern on the record as  
8 to where this trial is going because it feels like Mr. Kareem  
9 Bellamy is getting lost in all of this. That the case gets  
10 broader and broader and becomes a bigger and bigger indictment  
11 of the system, of the office of the -- whatever it is and that  
12 may play a role in what happened to him.

13              But really the heart of the matter is what happened  
14 to him and the heart of the trial should be focused on what  
15 happened to him.

16              And so there's just a real concern that the more  
17 that gets thrown into the pleadings, the more the trial is  
18 going to spin away from this human being at the heart of the  
19 case.

20              This is just my question and, of course, like I  
21 said, I will ask Mr. Lax to jump in and I'll hear what he has  
22 to say.

23              But I wanted to understand from you what the reason  
24 was that you're making this request because I didn't see it  
25 upon review of what you've given me and I thought that I might

1 be missing something. So let me hear if you have anything  
2 else to say before I turn to Mr. Lax.

3 MR. MAAZEL: I would just say that I don't see  
4 addition of this claim really expanding the length of the  
5 trial in any remotely substantial way.

6 I mean, I think it's quite likely that the 30(b)(6)  
7 witness will be a witness at trial. Quite likely that Barry  
8 Schwartz, the number two in the office, will be a witness at  
9 the trial and testifying about various claims in the case.

10 So there will be very efficient ways for us to  
11 present this evidence to the jury and we certainly feel it's  
12 in Mr. Bellamy's best interest for the jury to hear the  
13 evidence supporting this *Monell* claim, which ultimately is a  
14 claim that will -- if he prevails will provide him relief.

15 So we strongly believe that this does help Mr.  
16 Bellamy's case and it is important to Mr. Bellamy's case and  
17 it is relevant to the jury's deliberations.

18 MR. RUDIN: Your Honor, this is Joel Rudin. Might I  
19 add something?

20 THE COURT: Go ahead.

21 MR. RUDIN: The existing complaint does not as  
22 explicitly as would be desirable allege that a failure to  
23 discipline *Brady* violations generally led to the *Brady*  
24 violation that occurred in this case.

25 And we made an effort before Judge Donnelly decided



1 the motion to -- for summary judgment or as to the *Monell*  
2 claim to dismiss to make it clear that that was the  
3 plaintiff's theory.

4 And we conducted a great deal of discovery on that  
5 theory but the complaint hasn't been amended to make crystal  
6 clear that even though the Second Circuit noted that that  
7 theory is being pursued by plaintiff it's not clearly within  
8 the four corners of the complaint.

9 And in addition to that the -- you know the Supreme  
10 Court has made clear in *Conick v. Thompson* and the circuit  
11 courts have made clear that you don't have to have exactly the  
12 same constitutional violation to give notice to the  
13 municipality that there's a defective policy or practice and  
14 to establish a claim of deliberate indifference.

15 And essentially the courts have upheld the theory  
16 that the failure to discipline or to take remedial measures  
17 against misconduct generally will create a winning at all cost  
18 atmosphere that will lead to the kind of specific violations  
19 that occurred in a particulars case.

20 So that part of what this amendment accomplishes is  
21 to make clear that he large number of misconduct cases that  
22 are collected in that 1996 memorandum and the indifference of  
23 the office in various different ways to their knowledge about  
24 that misconduct created an atmospheres and a policy -- and  
25 shows that there was a policy of deliberate of indifferent

1 that existing at the time of the Bellamy trial that led David  
2 Guy to commit the specific acts of misconduct that he  
3 committed.

4 He might have committed other acts of misconduct.  
5 These happen to be the ones that he committed in this case  
6 because all he cared about was winning and he knew there'd be  
7 no consequence to him if he committed the *Brady* violation, if  
8 he committed the summation misconduct.

9 And so I understand Your Honor has raised the  
10 question about whether or not this amendment is too detailed.  
11 I think the reason for it is that the testimony that we  
12 received that Mr. Mazel elicited very recently is very, very  
13 dramatic.

14 Here you have a report that the highest levels of  
15 the office asked for that documented this misconduct that he  
16 had been found by the appellant courts in New York over, and  
17 over, and over again from the late 1980's until 1995 and at  
18 the beginning of 1996. They're obviously aware of the  
19 misconduct and now it's all collected for them and they do  
20 nothing. They don't change any of their practices or  
21 policies.

22 And so that -- one can infer from that indifference  
23 that the same atmospheres and policy and deliberate  
24 indifference existed around the time of the Bellamy trial and  
25 it's broader than holding back \$2,800 of undisclosed benefits,

1 or whatever the amount is that this witness was promised. And  
2 it's broader than the exact acts of summation misconduct that  
3 happened to occur in this case.

4 And so I think that's the reason why we would like  
5 to have the complaint be clearer so that the City cannot come  
6 back at the time of trial and say well, the existing complaint  
7 from 2012, if it's still the operative complaint, doesn't say  
8 anything about the failure to discipline *Brady* violations and  
9 it doesn't explicitly say that there was an atmosphere -- a  
10 winning at all cost atmosphere that was created by the failure  
11 to take any steps against any prosecutorial misconduct  
12 resulting in violations of the constitutional rights of  
13 criminal defendants.

14 So I think it's important for us to be able to have  
15 a document that makes clear what our theory is and so there  
16 isn't a problem at trial where the City can raise an argument  
17 that certain proof should not be allowed because the operative  
18 complaint doesn't make crystal clear that it's part of our  
19 theory.

20 THE COURT: And where in your amendment, or proposed  
21 amendment, do you make it crystal clear?

22 MR. RUDIN: Well, the --

23 THE COURT: In the hundred paragraphs that you're  
24 proposing to add, where does this become crystal clear?

25 MR. RUDIN: In the amended complaint that is added -

1 - in the cause of action that's added to the complaint that is  
2 around -- I mean, is built around the testimony about the --

3 THE COURT: Tell me which paragraph so I can read  
4 it.

5 MR. RUDIN: I don't have it. Maybe Mr. Maazel can  
6 do it. I don't have it in front of me but it alleges that  
7 there was widespread prosecutorial misconduct --

8 THE COURT: I know. I'm sorry, Mr. Rudin. I know  
9 that's what you're saying but I'm looking for the crystal  
10 clear argument, the crystal clear statement of your expanded  
11 theory.

12 You propose adding a hundred paragraphs to your  
13 complaint and so I'm asking you to point me to where it is.

14 MR. RUDIN: Well, I don't --

15 MR. MAAZEL: I have it in front of me, Your Honor.  
16 And of course it really is throughout the claim. But if we  
17 were to pick --

18 THE COURT: Yeah, but this is the problem, right?  
19 You're saying crystal clear but it's not crystal clear because  
20 it's lost.

21 MR. MAAZEL: Well, I --

22 THE COURT: Before you do that, because you might  
23 need a moment, I'm looking to see whether the *Brady* violation  
24 is alleged. I had the sense that the *Brady* violation was  
25 alleged -- it certainly was alleged in a way that was clear

1 enough for the Second Circuit, as you pointed out, to say that  
2 you had alleged it.

3 So I'm looking to see again through your red line  
4 where it is that you've now added a clear reference to the  
5 *Brady* violation issue.

6 MR. MAAZEL: If I could start with Your Honor's  
7 first question. So I think if you just start with paragraph  
8 405. And so this is a straight forward paragraph that makes  
9 clear the breadth of the deliberate indifference here.

10 THE COURT: So paragraph 405 is the one where you  
11 say the City admitted certain things in the 30(b)(6)  
12 deposition.

13 MR. MAAZEL: Yes. That's right. That the City --

14 THE COURT: That is a -- okay. Hold on a second.  
15 This is in your statement of facts. This is not in a claim.

16 MR. MAAZEL: No, this is in the claim.

17 THE COURT: Okay. I'm sorry. I'm looking to see  
18 where. Claim to *Monell*, the policy and practice, custom of  
19 prosecutorial misconduct, right?

20 MR. MAAZEL: Yes.

21 THE COURT: Claim two. Yes. Okay.

22 And so you're saying paragraph 407 recites certain  
23 facts.

24 MR. MAAZEL: Paragraph 405.

25 THE COURT: 405. Yes.

1 MR. MAAZEL: So paragraph 405 lists in simple terms  
2 what we learned in the 30(b)(6) deposition.

3 THE COURT: Right. Those are the failed to take  
4 certain actions.

5 MR. MAAZEL: Yes.

6 THE COURT: Okay. And then where's the expanded --  
7 you said that the original complaint said summation  
8 violations, witness protection issues and *Brady*. And now you  
9 want to add and other misconduct but the 405 doesn't contain  
10 misconduct. 405 contains a list of failures to act.

11 MR. RUDIN: Your Honor, paragraph 397 does it very  
12 clearly.

13 THE COURT: 397. Okay. Let me take a look at 397.  
14 Extensive history. These individuals have extensive  
15 history of prosecutorial misconduct. I'm sorry. The office  
16 had prosecutorial misconduct. Okay.

17 MR. RUDIN: And then it's followed by 398.

18 THE COURT: Okay. So it strikes me that -- and it  
19 struck me while I was reading this that you, as Mr. Rudin  
20 said, have this very dramatic report and you want to make sure  
21 the jury hears of the content.

22 Are you saying that without the amendment you  
23 wouldn't be able to introduce the report to the jury?

24 MR. MAAZEL: We would certainly -- if we were stuck  
25 with our existing complaint, we would make every argument we

1       could do before the jury.

2               But having this claim would make plain that it  
3       should be before the jury.

4               THE COURT: Well, but maybe you don't have to go  
5       that far. Have you tried to see if you could stipulate to  
6       portions of the complaint, or the introduction of information  
7       in the report?

8               If that's your goal, again, going back to my  
9       original question, if your goal is to put this very dramatic  
10      report before the jury, is there another way to do it other  
11      than amending the complaint with a hundred new paragraphs?

12              MR. MAAZEL: Well, we have twin goals, Your Honor.

13              One is to make sure the evidence is before the jury  
14      and the second is to make sure the claim is before the jury;  
15      it's own separate claim, because this is an important claim  
16      that if we prevail will vindicate Mr. Bellamy's rights.

17              THE COURT: Yes. Okay. All right. Mr. Lax, you've  
18      been waiting patiently. Let me hear from you.

19              MR. RUDIN: Your Honor, paragraph 4 --

20              THE COURT: I'm sorry. Somebody was speaking. I  
21      can't --

22              MR. RUDIN: Paragraph 401 makes the causation very  
23      clear between the types of misconduct that we would like to  
24      have in the case, clearly in the case, and the causation of  
25      constitutional violations that occurred in this case. The

1 link has made very clear.

2 The rest of it is detail that we would like in the  
3 complaint but at the very least we need to have clear the  
4 theories under which the evidence would be admissible.

5 Otherwise no doubt the City's going to try to  
6 drastically limit our proof to the 2012 complaint which is not  
7 a model of draftsmanship.

8 THE COURT: All right. Mr. Lax?

9 MR. LAX: Thank you, Your Honor.

10 I'll note first of all going back to the operative  
11 complaint, these dramatic statements that they're now pointing  
12 to paragraph 401, 397 in their revised proposed complaint, the  
13 basic premises are all in their operative pleading and,  
14 frankly, we have been doing discovery about all of this.

15 Like I'm not -- all of the things that Mr. Rudin and  
16 Mr. Maazel are saying about the nature of their complaints,  
17 I've not heard anything surprising because I knew that one,  
18 they were going to suggest -- I knew based on -- taking  
19 everything, the entire record altogether that they were going  
20 to be alleging deliberate indifference.

21 And I was aware that they were going to say that not  
22 just in summation, or with *Brady* but with everything there  
23 wasn't sufficient training, because that's the way they took  
24 the depositions and that's the way they prosecuted discovery  
25 in this case. All of that happened and it's been clear.



1           So this idea that they now suddenly need to add a  
2           hundred or whatever paragraphs to the complaint to make things  
3           clear, it's just simply not true. It's all there.

4           And I think what crystalizes the point is that when  
5           this case went up on appeal after summary judgment was granted  
6           by the district court, Mr. Rudin put in his brief a  
7           description of what the *Monell* claim was. And I'll read it if  
8           the court would like me to. It's on page 47 to 48.

9           And it says, "Beyond challenging the so called  
10          Chinese wall policy, Bellamy alleges that the *Brady* violation  
11          and summation misconduct in this case also resulted from the  
12          longstanding deliberate indifference of the D.A. as the  
13          personnel manager of his office through rampant and  
14          constitutional violations, proven not only by the existence  
15          and persistence of the Chinese wall," which is in quotation  
16          marks," policy but also by the failure of the D.A. to properly  
17          train and supervise and discipline the offending prosecutor."

18          The complaint alleges that 65 appellate decisions  
19          were issued condemning such misconduct in the tenured  
20          proceeding of the Bellamy trial and that a further 72  
21          decisions were issued through 2012 when the complaint was  
22          filed. Yet none of the responsible prosecutors were  
23          disciplined.

24          So previously before this amendment was requested  
25          plaintiff was quite clear that all of this was in the

1       operative pleadings. And so now the argument's being advanced  
2       that somehow it's sufficing.

3               It's not sufficient. This amendment falls squarely  
4       within the cases that say that once you have a clear and  
5       concise statement of what your claim is about, amending to  
6       embellish and embroider details of things that are really  
7       meant for the jury is impermissible.

8               And I think that that point is borne out by our  
9       discussion because when one considers plaintiff's arguments  
10      this afternoon and what they really were talking about, is  
11      they were really talking about relevance issues as it relates  
12      to evidence.

13              There is no allegation that I'm aware of either  
14      through the course of discovery and my (indiscernible) in this  
15      case or by the proposed amendment that a new theory of  
16      underlying constitutional misconduct occurred, be it an  
17      improper opening, and improper cross examination. Improper  
18      misuse of *Molineux*, or disregarding *Molineux* rulings, or  
19      (indiscernible).

20              None of that is -- (indiscernible). So all this is  
21      I think is a pitch to get some of this in front of the jury.  
22      The case law is clear though that this is not the forum or the  
23      context with which one does it.

24              And then putting us through the burden of sifting  
25      threw all this discovery to respond to this complaint has been

1 found to be prejudicial.

2 We then now -- I mean, there's just a generalized  
3 prosecutorial misconduct delivered in different claims being  
4 thrown out there. That is going to be subject to further  
5 motion practice.

6 I mean, it does expand the work on the case and it  
7 doesn't really add anything because there are really motion  
8 sin limine issues about whether, you know, a decision by the  
9 Second Department of the State of New York in X year is  
10 evidence of like the improper training when X prosecutor  
11 violated the New York State standard for G type of conduct.

12 I mean, that's the -- those are evidence questions.  
13 They're not necessarily a pleading question.

14 I mean, I'll say just generally I don't agree with  
15 all the representations that have been made about the  
16 (indiscernible) but I don't think that's really germane to our  
17 discussion here today.

18 So I think the court has a right, and the court's  
19 initial inclination that (indiscernible) are necessary is  
20 correct because it is. It doesn't add anything in terms of  
21 just inflammatory discussions about the D.A.'s office which  
22 whatever the motive is, it's just, again, it relates to  
23 evidence not claims.

24 THE COURT: All right. So thank you, everybody for  
25 your input.

1 MR. RUDIN: Your Honor, may I add one thing in  
2 reply.

3 THE COURT: Who's speaking, please?

4 MR. RUDIN: Mr. Rudin. Joel Rudin.

5 THE COURT: Yes. Go ahead.

6 MR. RUDIN: The problem -- I mean -- as Mr. Lax  
7 pointed out I handled the Second Circuit appeal and we pointed  
8 out in a footnote that while we had made it clear to the  
9 district court that we were pursuing a claim of the failure to  
10 discipline *Brady* violations, and that was part of our theory  
11 and we argued it that way, and the Second Circuit noted that  
12 that theory was -- that was one of our claims, if one looks at  
13 the way the complaint is drafted, while there are factual  
14 allegations in the factual part of the complaint that talk  
15 about training and discipline generally for misconduct, the  
16 way the actual causes of actions are drafted is you have one  
17 cause of action that is entitled failure to discipline  
18 summation misconduct, and then there's another cause of action  
19 that's entitled witness protection -- that makes reference to  
20 the deficient witness protection program.

21 But the broader theory that Mr. Lax seems to be  
22 conceding is in the case, and I'm glad that he's conceding  
23 that it's in the case and he's understood it all along, it  
24 still isn't spelled out in our complaint as clearly as we  
25 would like it to be so that there isn't any question going

1 forward.

2 And the paragraphs that I referred Your Honor to  
3 earlier are -- stand alone without the factual material that  
4 is in the proposed amendment and make it clear what Mr. Lax is  
5 saying is in the case, but which is not as clearly stated in  
6 the operative complaint as it might.

7 And so while I think it's important -- we, of  
8 course, would like the factual material that's in the proposed  
9 amendment to be allowed, at the very least we would ask that  
10 the paragraphs that make the legal theory clearer, and which  
11 Mr. Lax concedes is not a surprise to him at all be permitted.

12 MR. LAX: Your Honor, if I could have one very final  
13 brief point?

14 THE COURT: All Right.

15 MR. LAX: It's simply this. That we seem to have  
16 broad agreement on this call and on this hearing that there is  
17 no surprise to the City.

18 And I would suggest that under the unanimous case  
19 law, when there's no surprise to the City there's really no  
20 basis to oppose amending the complaint.

21 We all apparently seem to understand what the basic  
22 claims are and what the basic facts are and we are supposed to  
23 be the masters of our own complaint as to plaintiff and we  
24 believe that this is important to add as a claim.

25 And since there's really no dispute that there's no

1 prejudice here at all to the defense we would suggest that  
2 leave be liberally granted to amend and we just proceed under  
3 the new complaint.

4 THE COURT: I heard Mr. Lax say there is prejudice  
5 to the defendant in having to respond to file an answer to a  
6 complaint like this.

7 And even though your theory as you've described it  
8 and summarized it may not be a surprise to anybody and sure,  
9 in the first instance you can file a complaint as you wish, a  
10 complaint or an amendment, a proposed amendment like this does  
11 start to look like you're skirting any ability of the trial  
12 judge to rule on motions in limine on each of these points to  
13 weigh whether, in fact, it's fact relevant or not.

14 And so it's not as simple as you've set out to say  
15 that there's a -- whatever you want to do with the complaint  
16 you should be allowed to as long as it doesn't hurt -- as  
17 long as it's no surprise to the defendant, I simply don't  
18 accept that.

19 So I know the parties need to move forward on this  
20 and so I'm prepared to rule on your proposed amendments and I  
21 will start with what you've said, Mr. Maazel, about leave to  
22 amend should be granted (indiscernible).

23 And so I've looked at your proposed amendment in  
24 that light and I've looked at the timing of this, as well as  
25 the prejudice to the defendant.

1 I don't find that the amendments are proper. They  
2 are not of the kind of information or allegations that belong  
3 in a complaint. They are more -- they are so detailed they  
4 really are an attempt to make the complaint evidence itself.

5 And so I don't -- I just don't see the utility of  
6 permitting this complaint and I do find that there's prejudice  
7 because now that the defendant, as they should any time  
8 there's a pleading, needs to answer each argument -- each  
9 allegation that's presented and then figure out how to respond  
10 to it legally as well as factually.

11 Now you may say, Mr. Maazel, well, this is evidence  
12 that the defendants know about so what's there to deny? They  
13 should just admit everything.

14 But this is also a document that's going to be the  
15 document that the jurors will be using to make their decision  
16 and this goes far beyond placing allegations for the jury to  
17 consider in terms of making their decision. So I don't think  
18 it's proper.

19 And then the last point is that as unhappy as you  
20 may feel about the original complaint and Mr. Rudin's  
21 characterization of it, as inartfully pled, it contains  
22 everything you need in terms of the allegations.

23 And if there's anything beyond that that you want to  
24 present to Judge Donnelly, you can certainly bring it up to  
25 her and have her decide what is relevant to this case and what

1       isn't.

2                   And if at that point you look back on this and say  
3       well, if Judge Kuo hasn't let us amend, then we would be  
4       talking differently in terms of what this trial would look  
5       like. You could ask her to reconsider my ruling today.

6                   But I think at this late game -- this late stage of  
7       the game and having had everybody move forward, including me,  
8       on the assumption or the understanding that these were exactly  
9       the issues that you were looking at, the amendments are both  
10      unnecessary and prejudicial.

11                  So the motion to amend is denied, except to the  
12      extent that you've now fixed some of the -- deleted some of  
13      the causes of action that were with the -- the motion for  
14      summary judgment was upheld by the Second Circuit.

15                  So I think it would be very useful for everybody to  
16      use the clean copy of the amended complaint that only reflects  
17      the amendment insofar as it takes out what has been dismissed  
18      in the case.

19                  So please go back and take a look at what that is  
20      and that's the amended complaint. I'll permit that amendment  
21      to go forward so the jury is looking at a clean document.

22                  All right. Anything else, Mr. Maazel?

23                  MR. MAAZEL: No, Your Honor.

24                  THE COURT: All right. Mr. Lax?

25                  MR. LAX: No, Your Honor.



1 THE COURT: All right. Thank you, everybody.

2 MR. MAAZEL: Thank you, Judge.

3 (Proceedings concluded at 2:07 p.m.)

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5 I, CHRISTINE FIORE, Certified Electronic Reporter and  
6 Transcriber, certify that the foregoing is a correct  
7 transcript from the official electronic sound recording of the  
8 proceedings in the above-entitled matter.

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January 25, 2021

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Christine Fiore, CERT

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